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Date: June 28, 2006

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

Report Prepared by: Cindy Hom

Public Hearing: Yes: X No:

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TITLE: **USE PERMIT AMENDMENT NO. UA2006-6**

Proposal: Request to amend existing use permit to allow a 12' x 18' dance floor for King Crab Restaurant located in Calaveras Plaza.

Location: 269 W. Calaveras Boulevard

APN: 028-23-009

RECOMMENDATION: **Approve with conditions.**

Applicant: Pei Ying Chen & Zhuan Nam Wu 269 W. Calaveras Boulevard, Milpitas, CA 95035.

Property Owner: Lisa Lo, 1105 Tanglewood Way, San Mateo, CA 94403.

Previous Action(s): "S" Zone Approval, Use Permits and Amendments

General Plan Designation: General Commercial

Environmental: Categorically exempt pursuant to Class 1, Section ("15301") of the California Environmental Quality Act Guidelines

Present Zoning: General Commercial ("C2")

Existing Land Use: Multi-tenant shopping center

Agenda Sent To: Applicant/Owner (same as above)

Attachments: Site Plan, Applicant's Letter

PJ: 2322

BACKGROUND

In 1976, Planning Commission granted "S" Zone approval for the development of Calaveras Plaza. Since then, subsequent amendments to the approval have been obtained. Amendments include modifications to architectural elevations, sign proposals, and parking lot re-striping. Numerous use permits have also been approved for various projects within the plaza including Use Permit No. 479 that was approved in 1980 for a restaurant that King Crab Restaurant currently occupies. Use Permit No. 479 also allowed the sale of beer and wine in conjunction

with the restaurant. In June 2003, a "S" Zone and Use Permit Amendment were approved by the Planning Commission that allowed for the expansion of King Crab Restaurant. This Planning Commission approval included a 1,700 square foot building addition, additional seating, parking reduction, construction of new trash enclosures for the Calaveras Plaza shopping center, new landscaping and a pedestrian connection to Calaveras Boulevard. In December 2004, the Planning Commission approved a Use Permit Amendment that allowed onsite consumption of all types of alcohol.

Site Description

Calaveras Plaza serves as a neighborhood shopping center and provides a variety of retail and commercial services. Tenants within the Calaveras Plaza Shopping Center include Save Mart, Kinko's and numerous restaurants. Calaveras Plaza is a 7.63-acre site that is situated on four parcels. The project site is located north of West Calaveras Boulevard, west of Butler Street, east of South Abbott Avenue, and south of a single-family residential development. Surrounding land uses consist of residential uses that are located to the immediate north and west side of the project site and Serra Center with other various retail and restaurant uses located to south and east side of the project site.

THE APPLICATION

The application is submitted pursuant to Section 57 ("Use Permits") and Section 19.03-36 (General Commercial, Conditional Uses, Restaurants which include dancing). The applicant is requesting approval for a 12' x 18' dance floor to be used as part of the restaurant's banquet facilities. No other changes or modifications are proposed with this application

PROJECT DESCRIPTION

Site Layout and Access: The existing building is located on the northeastern portion of the property. The buildings are configured in a "C" shape with parking mainly to the north and south. There are also two freestanding buildings, one at the corner of Butler Street and other at the southwest corner of the property, along Calaveras Boulevard. Access to the site is located off of Calaveras Boulevard, Butler Street and from the shopping center to the west.



USE PERMIT FINDINGS

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas General Plan.
2. The proposed use is consistent with the Milpitas Zoning Ordinance.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to public health, safety, and general welfare.

The following sections explain how these findings can be made for the proposed project as submitted.

Conformance with General Plan

The project conforms to the General Plan in that the use directly relates to:

Implementing Policies 2.a-I-3, which encourages economic pursuits, which will strengthen and promote development through stability and balance.

Implementing Policy 2.a-I-6, which endeavors to maintain a balanced economic base that resists downturn in any economic sector.

The proposed dance floor provides an ancillary use to the full service restaurant and will add to the City's economic vitality by providing banquet facilities within the City. It will also help maintain this business in its location and increase the patrons of the shopping center.

Conformance with Zoning Ordinance

The purpose of the General Commercial (C2) District is to provide, "...the general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment." The dance floor is an ancillary use and is consistent with the C2 Zoning. Per section 19.03-36, "Restaurants including dancing are conditionally permitted and meets the intent and purpose of the C2 Zoning district by providing a retail use in a multi-tenant center. This use permit amendment complies with the development standards of the C2 Zone and parking regulations. The Project does not propose any exterior modifications, any changes to business operations that would affect parking, traffic, circulation, or solid waste generation beyond what it is already approved for.

Parking

Staff has provided a summary table (below) of the Parking for the various uses in the center. An analysis of the data shows that 464 spaces are required, that 338 spaces are allocated for uses in the center and that 69 spaces were approved for parking reductions. The balance of 57 spaces is presumed to be allocated to three retail tenants on the table for which data is not available. Because the project does not propose additional seats and the dance floor will be used only in conjunction with banquet events staff recommends that no additional parking be required.

Table 1: Parking Summary

Address	Use	Parking Allocated	Parking Required	# of Stalls Approved for Parking Reduction
177 Calaveras	Restaurant	15	46	
179 Calaveras	Retail	14	20	6
181 Calaveras	Retail	10	8	2
191 Calaveras	Retail	14	14	
201 Calaveras	Retail	4	4	
215 Calaveras	Retail	139	139	
217 Calaveras	Restaurant	10	20	
219 Calaveras	Dental	6	5	
221 Calaveras	Retail			
223 Calaveras	Retail	4	4	
231 Calaveras	Restaurant	13	20	7
233 Calaveras	Restaurant	12	23	11
257 Calaveras	Retail	30	30	
261 Calaveras	Retail			
263 Calaveras	Restaurant		8	
265 Calaveras	Restaurant	1	2	
269 Calaveras	Restaurant	29	68	25
273 Calaveras	Restaurant	6	15	9
275 Calaveras	Restaurant	10	17	7
279 Calaveras	Restaurant	21	21	2
Total		338	464	69

Total Number of Stalls Provided onsite = 418

A review of Planning Division files indicates that many of the restaurant uses were approved with parking modifications based on parking studies prepared for the various use permit applications for restaurants with parking modifications. Currently, Calaveras Plaza provides signage to indicate a designated parking area and 30 minute parking signs in key locations to encourage turn over of parking spaces. In addition, the adjacent properties have also installed signs to discourage patrons from parking in the adjacent shopping centers. To continue this effort, Staff *recommends* a condition of approval that prohibits any offsite parking on adjacent properties.

Conformance with Midtown Plan

All projects within the Midtown Area have to demonstrate compliance with the Specific Plan – including the Development Standards and Design Guidelines prior to any “S” Zone or Use Permit approval. In this case, required Midtown site improvements were included with the

approval for the expansion of King Crab's Restaurant in 2003. The proposed dance floor does not trigger any additional Midtown upgrades because it will be installed on existing floor area. Staff recommends a condition of approval that prohibits dancing as a nightly use and shall be limited for banquet occasions only.

COMMUNITY IMPACTS

The proposed use permit amendment to allow a dance floor is expected to have a positive community impact by making Calaveras Plaza a destination place for dining. As conditioned, the restaurant with on-premise consumption of alcohol would be a complementary use to nearby retail, residential, and office uses in the local vicinity.

CONFORMANCE WITH CEQA

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities" – interior alterations) of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Approve Use Permit Amendment No. UA2006-6 with conditions based on the findings listed below.

FINDINGS

1. The proposed project is consistent with the General Plan in terms of land use and Policies Implementing policies 2.a-I-3 and 2.a-I-6, which "encourages economic pursuits that will strengthen and promote development through stability and balance" as well as "...endeavors to maintain a balanced economic base that resists downturn in any economic sector." In addition, it is consistent with the General Commercial (C2) Zoning district and is identified as a conditionally permitted use.
2. Although the proposed project does not require Midtown upgrades, the restaurant expansion and site improvements approved in 2003 comply with various design guidelines and standards of the Midtown Plan.
3. The proposed project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary to the primary restaurant use and will not impact parking, noise, or odors.
4. The Project is categorically exempt from further environmental review pursuant to Class 21, Section 15321 of the State CEQA Guidelines.

SPECIAL CONDITIONS

1. This Planning Commission approval is to allow for a 12' x 18' dance floor only. Any changes to the floor plan or modifications to the conditions of approval will require Planning Commission approval of an amendment to this Use Permit and a public hearing. Minor modifications can be submitted to the Planning Division for processing pursuant to Section 42 of the Milpitas Zoning Ordinance. (P)
2. This use shall be conducted in accordance with all federal, state and local laws and regulations. (P)
3. Dancing is prohibited as a nightly use and shall be limited for banquet occasions only. (P)

4. Associated live entertainment and pre-recorded music used in conjunction with the dance floor shall be limited so that the sound shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the facility shall be closed, except when entering and leaving by the main entrance of the facility. That any entertainment (live, disc jockey, etc.) provided shall not disturb any nearby business and shall not be audible outside of the building. (P)
5. That the hours of operation shall be from 11:00 a.m. to 2:30 p.m. and 5:00 to 10:00 p.m. Monday-Friday; 10:00 a.m. to 3:00 p.m. and 5:00 p.m. to 10:00 p.m. Saturday and Sunday. Further, that any event which wishes to operate beyond 10:00 p.m. shall be subject to approval of the Milpitas Planning Division and Police Department. Said request shall be submitted to the Planning Division at least 30 days prior to the date of the event, to allow adequate time for the Police Department and other City Departments to review the request and to impose additional conditions of approval. (P)
6. That the operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The noise generated by the proposed use shall comply with the provisions of Chapter 213 of the Milpitas Municipal Code. (P)
7. Applicant shall submit a security plan to the approval of the Milpitas Police Department which shall include, but not be limited to, the provision of security guards for restaurant and parking lot security and to maintain order therein and prevent any activity which would interfere with the quiet enjoyment of property by nearby business tenants and residents. Said personnel shall be clothed in such a manner as to be readily identifiable as security. (P)
8. Offsite patron parking on adjacent properties is prohibited. (P)
9. Per Chapter 200, Solid Waste management, V-2003.10, General Requirement, applicant/property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Waste, applicant / property owner shall subscribe to and pay for solid waste service rendered. Prior to occupancy permit issuance (start of operation), the applicant shall submit evidence to the City that a Services (Formally BFU) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
10. It is the responsibility of the applicant to obtain any necessary encroachment permits or approval from affected agencies or private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
11. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
12. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the Nation Flood Insurance Program shows this site to be in A Special Flood

Hazard Area, Zone AE. The proposed work to the existing structure is considered non-substantial improvement and the zone designation is given for information only. (E)

13. This "S" Zone Amendment (P-SA2003-23) and Use Permit Amendment No. P-UA2003-7 approval is for an approximate 1,700 square foot building addition, 84 seat increase, and 25 space parking reduction as shown on approved plans dated June 11, 2003, except as may be otherwise modified by these conditions of approval. Any major modifications to the building or site shall require review and approval by the Planning Commission of an amendment to this S-Zone Approval. Minor changes, as per Sec. 42-10 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff or Planning Commission Subcommittee. (P) Previous Conditions of Approval
14. The maximum approved seating for this expanded restaurant is 204 indoor seats (including the waiting area). Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum dining room seating: 192, as per Use Permit Amendment No. P-UA2003-7 granted by the Planning Commission on June 11, 2003." (P) Previous Conditions of Approval
15. The applicant shall comply with all conditions of Planning Commission Resolution No. 168 (attachment), a resolution of standard conditions for commercial development. (P, E – all items) Previous Conditions of Approval
16. The applicant shall comply with City Council Resolution No. 6296, a resolution of "Guidelines for Recycling Enclosures" (attachment). (P – all items) Previous Conditions of Approval
17. Building permit plans shall reflect that all new and existing rooftop equipment shall not be visible from any ground views. (P) Previous Conditions of Approval
18. Prior to building permit issuance, the applicant shall submit tenant improvement plans that incorporate a scrubber or carbon filter, or similar equipment, on the roof or vent to control odors. The equipment shall be screened from view to the approval of the Planning Division and reflected on the tenant improvement plans. (P) Previous Conditions of Approval
19. The applicant shall submit revised landscaping plans (landscape plans shall be completed and stamped by a licensed landscape architect) prior to building permit issuance that incorporate the following changes: (P) Previous Conditions of Approval
20. The revised landscaping plan should incorporate special treatments at driveway entrances into the shopping center. The revised landscaping plan shall incorporate 24-inch box trees that are of the broadleaf and deciduous type. (P) Previous Conditions of Approval
21. The revised landscaping plan shall use native and drought-tolerant plant materials.
 - a. The revised landscaping plan shall indicate new landscaping areas (minimum of 400 square feet).

- b. Mulch planting beds as a replacement for turf areas where possible, including the use of bark chips, wood grinding or leaves.
 - c. The revised landscaping plan shall have plantings grouped according to water needs.
 - d. An automatic water system utilizing low volume drip, spray or bubbler emitters shall be installed in landscape areas. Previous Conditions of Approval
22. Prior to issuance of a certificate of occupancy, the applicant shall provide proof of five (5) new garbage enclosures (front load service) or two (2) new compactors (with enclosures) for the entire shopping center. The new enclosures shall match the architecture and colors of the existing building. (P, cross referenced with Engineering Special Condition No. 30) Previous Conditions of Approval
23. Prior to issuance of a certificate of occupancy, an "Odorestor" unit shall be installed on the garbage bin and maintained in good working order. "Odorestor" units may be ordered through BFI. Please contact Cynthia Jackson, BFI Customer Service Supervisor, at (408) 432-1234 for more information. (P) Previous Conditions of Approval
24. Prior to issuance of building permits, plans shall include, at a minimum, two signs (to the approval of the City, one at each driveway to the rear area) that inform patrons of available parking at the rear of the building. (P) Previous Conditions of Approval
25. The driveway to the rear parking area at the west end of the site shall be maintained as a minimum 20-foot wide two-way drive aisle. (P) Previous Conditions of Approval
26. Prior to issuance of building permits, plans shall include "no parking" signs along the western access way to the rear parking area to the approval of the City. (P) Previous Conditions of Approval
27. During all construction activities, the developer shall adhere to the following Best Management Practices as suggested by the Bay Area Air Quality Management District (BAAQMD). These notes shall be placed on the Grading and Construction plans prior to permit issuance: (P) Previous Conditions of Approval
- a. Watering all exposed or disturbed soil surfaces, at least twice daily, as necessary to eliminate visible dust plumes;
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a two feet freeboard level within their truck beds;
 - c. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles of debris, soil, sand or other materials;
 - d. Suspension of all earthmoving or other dust-producing activities or equipment during periods of high winds when watering cannot eliminate dust plumes;
 - e. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - f. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - g. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
 - h. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);

- i. Limit traffic speeds on unpaved roads or areas to 15 mph.
28. During construction, the developer/applicant shall adhere to the following Best Management Practices (BMPs) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P) Previous Conditions of Approval
- a. Store building materials under cover or in enclosed areas.
 - b. Before painting, spread a ground cloth to collect paint.
 - c. Mix paint indoors before starting work.
 - d. Keep paint buckets away from contact with storm water.
 - e. Capture any paint spills before they flow into a storm drain.
 - f. During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
29. All new utilities shall be placed underground or in subsurface conduits. (P,E) Previous Conditions of Approval
30. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P) Previous Conditions of Approval
31. The business owner shall post signs (in English, Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a certificate of occupancy. (P) Previous Conditions of Approval
32. The preparation and storage of food shall not be permitted outside of the establishment in perpetuity. (P)
33. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer in perpetuity. (P) Previous Conditions of Approval
34. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P) Previous Conditions of Approval
- a. Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
 - b. Double or triple bag waste to prevent leaking.
 - c. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - d. Keep the ground under and around the garbage dumpsters swept.
 - e. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.

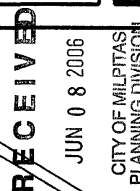
- f. It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
35. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P) Previous Conditions of Approval
36. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P) Previous Conditions of Approval
37. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a building permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E) Previous Conditions of Approval
38. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to any permit issuance. (E) Previous Conditions of Approval
39. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary on-site public improvements, including but not limited to, relocation of existing water main, fire hydrant and water services. Plans for all public improvements shall be prepared on Mylar (24"x 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. (E) Previous Conditions of Approval
40. Prior to any permit issuance the developer shall dedicate a new 15-foot wide water line easement and easement for relocated water meter, and successfully process the vacation of the existing water line easement. (E) Previous Conditions of Approval
41. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E) Previous Conditions of Approval
42. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structures are permitted within City easements. (E) Previous Conditions of Approval
43. Prior to occupancy permit issuance, applicant or the shopping center owner shall construct a total of five trash enclosures or two compactor enclosures for the entire shopping center. The proposed enclosures shall be designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the enclosures. (E, Cross referenced with Planning Division Special Condition No. 9) Previous Conditions of Approval

44. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial use: (E) Previous Conditions of Approval
45. Maintain an adequate level of service for trash collection. Increase service subscription to: garbage, 1 – 4cyd, 5x/wk; recycling, 1 – 4cyd 3x/wk. Previous Conditions of Approval
 - a. Maintain recycling services including separate services for beverage containers.
 - b. Maintain a tallow account and keep the tallow bins clean.
46. After the applicant has started its business, the solid waste service shall be evaluated by a BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E) Previous Conditions of Approval
47. Prior to any work within public right-of-way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E) Previous Conditions of Approval

Planning = (P)

Engineering = (E)

ARCHITECT
DATE 4-30-2003
PROJECT NO. 79-2256
SCALE AS SHOWN
DRAWN BY
SHEET
A-1
OF SHEETS



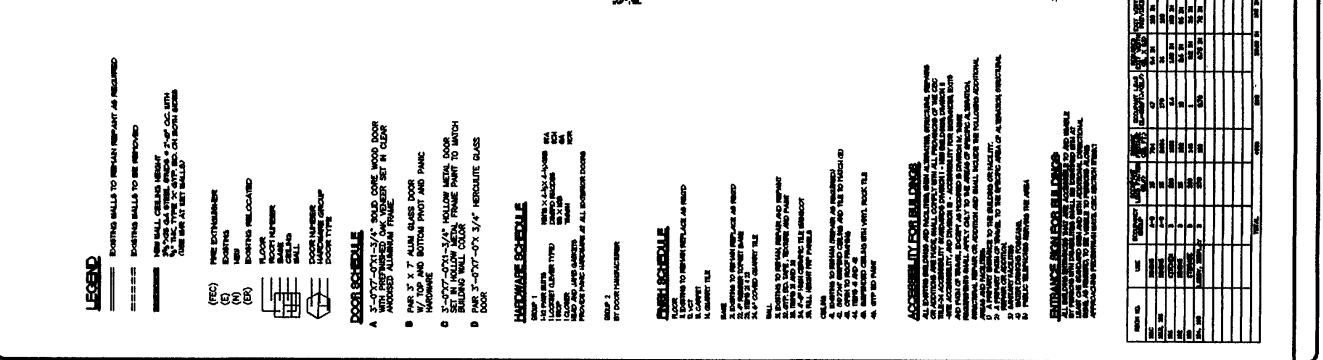
NOTES

1. BE CONTINUOUSLY ACCESSIBLE
2. HAVE MAXIMUM 1/2" CHANGES IN ELEVATION
3. BE MINIMUM OF 48" IN WIDTH
4. WHERE NECESSARY TO CHANGE ELEVATION AT A SLOPE EXCEEDING 5% SHALL HAVE RAMPS COMPLYING WITH 1981-1131.5

A MASTER SITE PLAN

DRAWING INDEX

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